

STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )



IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, CHANCERY DIVISION

ILLINOIS BRICK COMPANY, an  
Illinois corporation, and  
EILEEN G. SEXTON and  
BEN SKOLNIK, duly appointed  
Executors for the Estate of  
John Sexton, Deceased,  
and doing business as  
JOHN SEXTON CONTRACTORS CO.,

Plaintiffs,

v.

VILLAGE OF LANSING, an  
Illinois municipal corporation,

Defendant.

NO. 72 CH 2804

DECREE

This cause having come to trial on the complaint of plaintiff ILLINOIS BRICK COMPANY, an Illinois corporation (hereafter "ILLINOIS BRICK"), by its attorneys Concannon, Dillon, Snook & Morton, and plaintiffs EILEEN G. SEXTON and BEN SKOLNIK, duly appointed Executors for the Estate of John Sexton, Deceased, and doing business as JOHN SEXTON CONTRACTORS CO. (hereafter "SEXTON"), by their attorneys Kirkland & Ellis, and the answer thereto of the defendant VILLAGE OF LANSING, an Illinois municipal corporation, (hereafter "VILLAGE"), by Walker & Feikema, its attorneys, and the Court having heard the witnesses testifying at said trial, having examined the exhibits submitted into evidence,

having examined the answers of the VILLAGE to written interrogatories filed on behalf of SEXTON, and being advised in the premises,

FINDS AS FOLLOWS:

A. ILLINOIS BRICK is the owner in fee simple of approximately 44 acres of real estate (hereafter "subject property") located in the VILLAGE southwest of the intersection of 170th Street and the right of way of the Penn-Central, the subject property being legally described as follows:

That part of the North Half (1/2) of the Northwest Quarter (1/4) of Section Thirty (30), Township Thirty-Six (36) North, Range Fifteen (15) East of the Third Principal Meridian, lying North and East of the Pittsburgh, Cincinnati, Chicago and St. Louis Railway Company's right-of-way, excepting therefrom that portion of said premises conveyed to the South Chicago and Southern Railroad Company, and excepting therefrom the following described property:

A parcel of land in the northwest quarter (N.W.1/4) of the northwest quarter (N.W.1/4) of Section Thirty (30), Township Thirty-Six (36) North, Range Fifteen (15), East of the Third Principal Meridian, in Cook County, Illinois, bounded and described as follows: Beginning at a point on the north section line of said section, which is thirty-three and eighty-seven hundredths (33.87) feet easterly of the intersection of said north section line, with the northeasterly right of way line of the Pittsburgh, Cincinnati, Chicago & St. Louis Railroad, measured along said north section line; thence southwesterly one hundred forty and nine hundredths (140.09) feet to a point on the southwesterly right of way line of said railroad company, which is one hundred fifty-eight and eight hundredths (158.08) feet southeasterly of the north section line of said section, measured along said southwesterly railroad right of way line; thence southeasterly along said southwesterly railroad right of way line one hundred sixty-five and seventy-six hundredths (165.76) feet; thence northeasterly two hundred eighty-six and ninety-nine hundredths (286.99) feet to a point on the north section line of said section, which is one hundred sixty-eight and three-tenths (168.3) feet easterly of the point of beginning, measured along the north section line of said section; thence westerly to the point of beginning, excepting from said parcel of land the right of way of the Pittsburgh, Cincinnati, Chicago & St. Louis Railroad.

B. Located within the subject property is a clayhole approximately 22.226 acres in area and with an average depth of approximately 35 feet.

C. The subject property was acquired by ILLINOIS BRICK in the year 1917 for the purpose of excavating clay for use on the premises for brick manufacturing in a plant already located on the property. Operations of the plant were discontinued about 1932, resumed in 1948 and discontinued after approximately one year. In about 1955 ILLINOIS BRICK dismantled the equipment and removed almost all of the existing buildings. Despite ILLINOIS BRICK's best efforts the aforesaid clayhole has been and continues to be used by various persons unknown to plaintiffs for disposal of old cars and other junk, and for motorbiking.

D. The subject property is located in the industrial section of the Village of Lansing. It is bounded on two sides by railroad lines and is part of a large area zoned for Limited Manufacturing (except that northeast of the intersection of 170th Street and the aforesaid railroad right of way there is land zoned and used for the even more intensive Broad Manufacturing). Approximately 1/4 mile to the east of the eastern boundary of the clayhole, beyond the railroad tracks and a manufacturing plant, is an area zoned and used for single family residential purposes.

E. When the subject property was acquired by ILLINOIS BRICK and operations on it commenced, it was located in the VILLAGE, but no zoning ordinance controlled its use. Any use of

the land, including excavation, brickmaking and filling, was lawful and proper. Each of said uses were then and continue to be not only lawful and proper but also essential for the public health, safety, morals, comfort and general welfare. Subsequently in 1941 the Village of Lansing, pursuant to statutory authorization, enacted zoning ordinances, the present one being the Comprehensive Amendment of August 22, 1961 as amended. The subject property as well as most of the surrounding area is located in an M-1 Limited Manufacturing District. A limited sanitary landfill, as described below, is not a permitted use in that District.

F. "Sanitary landfill", as that term is generally and herein used, means the most modern method of refuse and garbage disposal without nuisance, fire or public health hazard and recommended by the Public Health Service of the U. S. Department of Health, Education and Welfare. The method is designed to eliminate the various noxious and unpleasant features of the old-fashioned "open dump". The method in general contemplates the deposit of refuse in layers of not more than two to three feet after compaction and the covering of the refuse every day with layers of six inches to one foot of earth. There is a final cover of at least two feet of clean earth at the end of the operation. The hole is carefully kept free of water by the use of pumps and otherwise. The daily cover of earth together with the dryness of the area eliminates problems of air pollution, rodents, flies and unsightliness. There are no open fires permitted. The contractor keeps fire-fighting equipment readily available for prompt extinction of accidental fires. Fences, landscaping

and other methods are used to screen the operation from neighbors and the public. As a further safeguard a professional rodent control subcontractor is retained to make regular surveys for the presence of rodents.

G. "Dry fill", as that term is generally and herein used, means the disposition of all manner of refuse, such as clay, brickbats, earth, tile, rock, concrete, stone, sand, slag, wood, cardboard, metals and other similar refuse but specifically excluding household, restaurant or other garbage. The method of operation is the same as that described for sanitary landfill in paragraph F above.

H. SEXTON is presently and has been for almost 40 years in the business of refuse disposal in the greater Chicago area and is recognized as the best sanitary landfill operator in said area, with the cleanest and most efficient operations. SEXTON also has nationwide recognition for the quality of its operations. SEXTON is presently operating three major landfills in Cook County.

I. On October 1, 1970 SEXTON and ILLINOIS BRICK entered into an agreement for SEXTON to fill the clayhole on the subject property by sanitary landfill.

J. On or about June 11, 1971 ILLINOIS BRICK and SEXTON filed an application with the Zoning Board of Appeals of the Village of Lansing for rezoning the subject property temporarily to M-2 and for a special use for a limited sanitary landfill. The application requested an automatic rezoning back to the present M-1 upon the completion of the limited sanitary landfill operation. "Limited" sanitary landfill as used in the application and herein means that garbage to be

deposited into the subject property would be limited to that produced in the Village of Lansing, all other refuse deposited to be dry fill only.

K. After several hearings pursuant to due and regular notice the Zoning Board of Appeals of the Village of Lansing on February 23, 1972 adopted a motion to deny the said application of ILLINOIS BRICK and SEXTON for temporary rezoning and a special use and, among other things, questioned whether there even was provision for special uses under M-2. On April 4, 1972, the Village Board of the Village of Lansing approved the recommendation of the Zoning Board of Appeals. Plaintiffs have now exhausted their administrative remedies in the Village of Lansing.

L. The present highest and best use of the subject property, under which it would have a value four to five times as great as its present value, is an interim use of limited sanitary landfill until the present excavation is brought up to grade so that the entire subject property may be devoted to a use or uses permitted in the M-1 Limited Manufacturing District.

M. The subject property, in its present condition and zoning has a very low value; the clayhole itself, if considered separately from the balance of the subject property, having a negative value since it is of no practical use and constitutes an upkeep and maintenance expense to the owner.

N. If a limited sanitary landfill operation is conducted on the subject property with all modern safeguards and using the standards for such operation as described in the testimony of the witnesses and the exhibits submitted into evidence in this cause, and all subject to

applicable provisions of Illinois law and regulation, there will be no adverse effect on or depreciation of any of the manufacturing or residential properties in the area, nor will such operation have any adverse environmental effects.

O. The interim use of the subject property for a limited sanitary landfill would be of great benefit to the Village of Lansing, the southern portion of Cook County and the public generally in that it would provide a much needed refuse disposal site. Such a use would increase tax values, would eliminate the existing unsightly excavation with the attendant problems referred to in paragraph C above and would for all the reasons stated herein ultimately enhance the values of the surrounding manufacturing and nearby residential properties and otherwise benefit the VILLAGE and its inhabitants.

P. The action of the Village of Lansing in refusing to rezone the subject property to M-2 and to grant the requested special use, or, in the alternative, in enacting a zoning ordinance under which a limited sanitary landfill is neither a permitted use nor a special use in any zoning district and which therefore provides for no economic way in which excavated land can be filled, ignores the highest and best use of the subject property and has no reasonable relation to the public health, safety, morals, comfort and general welfare.

Q. On November 18, 1969 the Board of Trustees of the Village of Lansing passed an ordinance entitled "An Ordinance Prohibiting Dumping Or Filling In Excavations Containing Water" (hereafter "Anti-Dumping Ordinance"). The first two sections of the Anti-Dumping Ordinance provide as follows:

Section 1. No person, firm or corporation shall cause or permit any dumping or filling in any hole, lake, pond or other excavation when said hole, lake, pond or other excavation contains water therein to a depth of one foot or more.

Section 2. No person, firm or corporation shall cause or permit any dumping or filling in any hole, lake, pond or other excavation of any material except dirt, soil, clay, brick, stone, concrete, or similar materials which will not rot, decay or decompose.

Section 2 is construed by the VILLAGE to prohibit the deposit on the subject property of garbage, wood or other similar material subject to decay and decomposition even if such material is deposited in a completely dry area containing no water whatever. Thus construed Section 2 has no reasonable relation to the public health, safety, morals, comfort and general welfare.

R. The Lansing Zoning Ordinance and the Anti-Dumping Ordinance, insofar as they relate to the subject property, are invalid and void for the following reasons:

(a) They contravene and violate the Fourteenth Amendment of the U. S. Constitution, which provides in part that no state shall deprive any person of property without due process of law.

(b) They contravene and violate Section 2 of Article I of the Illinois Constitution, which provides in part that no person shall be deprived of property without due process of law.

(c) They are harsh, arbitrary, oppressive, prohibitory and confiscatory.

(d) The Lansing Zoning Ordinance contravenes and violates Section 15 of Article I of the Illinois Constitution, which provides in part that private



property shall not be taken or damaged for public use without just compensation as provided by law.

(e) The Lansing Zoning Ordinance contravenes and violates Section 11-13-1 of Chapter 24 of the Illinois Revised Statutes, 1971, which provides in part that the objectives of zoning shall be that the taxable value of lands and buildings throughout the municipality may be conserved and that the public health, safety, comfort, morals and welfare may be promoted and which further provides that in all zoning ordinances due allowance shall be made for existing conditions, the conservation of property values and the direction of building development to the best advantage of the entire municipality.

(f) The Lansing Zoning Ordinance contravenes and violates the policy of the State of Illinois as declared in The Surface-Mined Land Conservation And Reclamation Act, Section 202 of Chapter 93 of the Illinois Revised Statutes, 1971, to provide for conservation and reclamation of lands affected by surface mining in order to restore them to optimum future productive use and to provide for their return to productive use including, but not limited to, inter alia, industrial sites.

(g) The Lansing zoning ordinance constitutes a cloud on ILLINOIS BRICK's title.

S. This Court has jurisdiction of the parties and the subject matter of these proceedings.

NOW THEREFORE IT IS ORDERED, ADJUDGED AND DECREED

AS FOLLOWS:

1. The zoning ordinance and the Anti-Dumping Ordinance of the VILLAGE, insofar as they prohibit the operation on the subject property of a limited sanitary landfill as defined above, be and they hereby are declared invalid and void.

2. Plaintiffs be and they hereby are declared to have the right to operate on the subject property a limited sanitary landfill as defined above and in accordance with the standards, safeguards and methods described in the testimony of the witnesses at the trial hereof and the exhibits submitted into evidence by the plaintiffs.

3. The VILLAGE, its officers, agents, servants and employees be and they hereby are perpetually enjoined from interfering with plaintiffs in the operation on the subject property of such limited sanitary landfill conducted in accordance with such standards, safeguards and methods.

ENTER:

JUDGE

Dated October \_\_\_\_\_, 1972

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